

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE NO. 1:23-CV-00129-MR**

ACCORDIUS HEALTH AT)	
ASHEVILLE, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES SMALL)	
BUSINESS ADMINISTRATION,)	
<i>et al.</i> ,)	
)	
Defendants.)	

NOTICE OF SUPPLEMENTAL AUTHORITY

The Honorable John D. Bates, United States District Judge for the District of the District of Columbia, granted summary judgment to the PPP borrower and denied summary judgment to the Government Defendants and vacated and remanded for further SBA proceedings in *35 State Street Hotel Partners, LLC v. Loeffler*, No. 24-cv-747, 2025 WL 870535 (D.D.C. Mar. 20, 2025). The decision, a copy of which is attached, is persuasive authority pertinent to this action challenging the Single Corporate Group (SCG) Rule, as the decision concluded that SBA had statutory authority to adopt that rule: “SBA determined how to allocate the funds across applicants and used the SCG Rule to do so [T]hat did not contradict the

text of the governing statutes. And it also did not ‘frustrate’ the purposes of those statutes.” *See* 2025 WL 870535 at *10. Defendants have raised those arguments in this action. Defs. Br. 12-15 (Doc. 35).

Although the District Court determined in *35 State Street Hotel* that SBA validly issued the SCG Rule, that court concluded that “SBA didn’t fully explain its decision” to deny the borrower’s forgiveness application concerning a “second draw” PPP loan authorized by the Economic Aid Act. 2025 WL 870535 at *11. The District Court noted that the rule provided that “an applicant *who failed to notify the lender and request cancellation* of his applications for or receipt of loans in excess of the cap would be ineligible for forgiveness,” but determined that SBA “did not say” that its forgiveness denial rested on such failure of applicant notification to the lender. *Id.* at *12. Although “[n]othing indicate[d],” the District Court observed, “that” the applicant so “notified any lender,” meaning all of the pertinent group’s second-draw “loans would have been ineligible for forgiveness,” SBA had without explanation forgiven some of those loans. *Id.* at *13. Hence, the District Court vacated and remanded, observing that “SBA may be able to rehabilitate its rationale upon remand.” *See id.*

But here, Plaintiffs’ challenge in this Court to the rationale for the disputed forgiveness denials instead concerns the sufficiency of the basis for SBA’s conclusion that, for the narrow purposes of applying the rule, Plaintiffs were

members of a single corporate group. *See* Defs. Br. 25-32 (responding to that challenge). That issue was not raised in, and hence was not addressed in, 35 *State Street Hotel*.

Respectfully submitted, this the 25th day of March 2025,

RUSS FERGUSON
United States Attorney

s/Gill P. Beck
GILL P. BECK
Assistant United States Attorney
Chief, Civil Division
N.C. Bar No. 13175
Room 233, US Courthouse
100 Otis Street
Asheville, NC 28801
Telephone: 828-271-4661
Fax: 828-271-4327
E-Mail: gill.beck@usdoj.gov

YAAKOV M. ROTH
Acting Assistant Attorney General

ERIC J. HAMILTON
Deputy Assistant Attorney General

JOSEPH E. BORSON
Assistant Branch Director

s/Indraneel Sur
INDRANEEL SUR (DC No. 978017)
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station
Washington, D.C. 20044
Telephone: 202-616-8488
Fax: 202-616-8470
E-mail: indraneel.sur@usdoj.gov

Counsel for Defendants

Certification Under Standing Order Published June 27, 2024

Pursuant to the Standing Order of this Court entered June 18, 2024 and published to the Bar of the Western District on June 27, 2024, the undersigned hereby certifies:

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg;

2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

This the 25th day of March 2025.

s/Indraneel Sur
INDRANEEL SUR (DC No. 978017)
Senior Counsel
United States Department of Justice
Civil Division, Federal Programs Branch